

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT V. MONTENEGRO,

No. C 13-00244 YGR (PR)

Petitioner,

v.

GREG LEWIS, Warden,

Respondent.

**ORDER (1) VACATING FEBRUARY 27, 2013 ORDER DISMISSING ACTION WITHOUT PREJUDICE; (2) REOPENING ACTION; AND (3) DIRECTING RESPONDENT TO SHOW CAUSE WHY THE PETITION SHOULD NOT BE GRANTED**

Petitioner, a state prisoner, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In an Order dated February 27, 2013, the Court dismissed the petition because Petitioner had not paid the filing fee or provided the proper forms in support of his *in forma pauperis* (IFP) application.

The record shows that Petitioner had in fact paid the full filing fee on February 25, 2013. However, this form was not entered into the Court's electronic database until February 27, 2013, the same date the dismissal order was issued. In view of this, it is clear that the present petition was dismissed erroneously. Therefore, the Court's February 27, 2013 Order of Dismissal Without Prejudice is VACATED.

The Court now reviews the present petition. It does not appear from the face of the petition that it is without merit. Good cause appearing, the Court hereby issues the following orders:

1. The Court's February 27, 2013 Order of Dismissal Without Prejudice is VACATED. The Clerk of the Court shall REOPEN this action.

2. The Clerk shall serve a copy of this Order and the petition and all attachments thereto upon Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this Order on Petitioner at his current address.

3. Respondent shall file with this Court and serve upon Petitioner, within **one-hundred and nineteen (119) days** of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should

1 not be issued. Respondent shall file with the Answer a copy of all portions of the relevant state  
2 records that have been transcribed previously and that are relevant to a determination of the issues  
3 presented by the petition.

4 4. If Petitioner wishes to respond to the Answer, he shall do so by filing a Traverse with  
5 the Court and serving it on Respondent within **sixty-three (63) days** of his receipt of the Answer.  
6 Should Petitioner fail to do so, the petition will be deemed submitted and ready for decision **sixty-**  
7 **three (63) days** after the date Petitioner is served with Respondent's Answer.

8 5. Respondent may file with this Court and serve upon Petitioner, within **sixty-three**  
9 **(63) days** of the issuance of this Order, a motion to dismiss on procedural grounds in lieu of an  
10 Answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section  
11 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court and serve on  
12 Respondent an opposition or statement of non-opposition to the motion within **sixty-three (63) days**  
13 of receipt of the motion, and Respondent shall file with the Court and serve on Petitioner a reply  
14 within **fourteen (14) days** of receipt of any opposition.

15 6. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court  
16 and Respondent informed of any change of address and must comply with the Court's orders in a  
17 timely fashion. Pursuant to Northern District Local Rule 3-11 a party proceeding *pro se* whose  
18 address changes while an action is pending must promptly file a notice of change of address  
19 specifying the new address. *See* L.R. 3-11(a). The Court may dismiss without prejudice a complaint  
20 when: (1) mail directed to the *pro se* party by the Court has been returned to the Court as not  
21 deliverable, and (2) the Court fails to receive within sixty days of this return a written  
22 communication from the *pro se* party indicating a current address. *See* L.R. 3-11(b); *see also*  
23 *Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).


24 Petitioner must also serve on Respondent's counsel all communications with the Court by  
25 mailing a true copy of the document to Respondent's counsel.

26 7. Extensions of time are not favored, though reasonable extensions will be granted.  
27 Any motion for an extension of time must be filed no later than **fourteen (14) days** prior to the  
28

1 deadline sought to be extended.

2 IT IS SO ORDERED.

3 DATED: March 8, 2013

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE